

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Justice Joyce L. Kennard, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: August 26, 2003

SUBJECT: Appellate Procedure: Require Consecutive Pagination of Supporting Documents to Habeas Corpus Petitions Filed by Attorneys (amend Cal. Rules of Courts, rules 56(i) and 56.5) (Action Required)

Issue Statement

Rule 56(d) of the California Rules of Court provides that documents submitted in support of a petition in a reviewing court shall be “bound together at the end of the petition or in separate volumes not to exceed 300 pages each, with consecutive pagination throughout.” However, rule 56(i) provides that “[t]he provisions of this rule shall not apply to applications for a writ of habeas corpus. . . .” Thus, the consecutive pagination requirements of rule 56(d) do not currently apply in habeas corpus proceedings, and no other rule currently establishes such requirements.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2004, amend rules 56(i) and 56.5 of the California Rules of Court to clarify that supporting documents to habeas corpus petitions filed by attorneys must be consecutively paginated.

The text of the proposed amendments to rules is attached at pages 4–5.

Rationale for Recommendation

When the pages of exhibits to habeas corpus petitions are not consecutively paginated, it is very difficult for the court to identify and cite pages in these supporting documents. This can be particularly true in capital cases, in which the Supreme Court often receives habeas corpus petitions with multiple volumes of supporting exhibits.

While it might be difficult for a self-represented litigant who files an application for a writ of habeas corpus to comply with the consecutive pagination requirements applicable to other petitions, there is no reason that attorneys filing these applications cannot follow the same pagination requirements for supporting documents accompanying habeas corpus petitions as they would follow with other petitions. The committee therefore proposes that rules 56 and 56.5 be amended to require that when a petition for a writ of habeas corpus is filed by an attorney, then supporting documents accompanying that petition must be consecutively paginated. The committee also proposes that descriptive headings be added to subdivisions (a) and (b) of rule 56.5 and that other minor clarifying changes be made.

Alternative Actions Considered

As discussed below, the committee considered, but ultimately decided against modifying the language of rule 56.5 concerning the consequences for failures to comply with the requirements of that rule.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2003 comment process. Four individuals or organizations submitted comments concerning this proposal. Three of these commentators agreed with the proposal without suggesting any changes.¹ Only one commentator, Mr. Saul Bercovitch, commenting on behalf of the State Bar of California's on Appellate Court Committee, raised any concerns about the proposal. Mr. Bercovitch noted that the State Bar committee had no opposition to the amendments proposed by the committee but was concerned that rules 56 and 56.5 currently use somewhat different language concerning the consequences for noncompliance with the rules' requirements. The State Bar committee points out that rule 56.5(d), which relates specifically to the consequences for failure to comply with the format requirements for habeas corpus petitions, provides that:

(d) [Nonconforming petitions] A petition that is not in technical compliance with (c) but that is otherwise in compliance with applicable court rules must be accepted and filed. It may be stricken, however, if the noncompliance is not cured promptly on request of the clerk.

However, rule 56(d), which relates to format requirements for documents submitted in support of petitions in general, provides:

The clerk shall accept for filing petitions and supporting documents not in compliance with this subdivision; but the court may give the petitioner notice requiring that the petition and documents be brought into compliance within a

¹ The full text of the comments that were submitted and the committee responses to these comments are set forth in the accompanying comment chart, attached at page 6.

stated reasonable time, or the petition may be stricken or denied summarily.

The State Bar committee suggests that the term “technical” in rule 56.5 is ambiguous and that it is confusing to have two slightly different provisions addressing noncompliance with format requirements for petitions. The State Bar committee suggests that the word “technical” be deleted from rule 56.5.

The committee does not recommend deleting the word “technical” from rule 56.5 as suggested by the State Bar committee. Rules 56 and 56.5 relate to somewhat different types of noncompliance: rule 56(d) relates only to noncompliance with format requirements for supporting documents while rule 56.5(d) relates to “technical” noncompliance with requirements in rule 56.5(c) concerning both the form and content of the petition. Removing the word “technical” from this provision might create the implication that the court is required to accept for filing documents that do not meet the basic content requirements for habeas corpus petitions. The committee believes, however, that the State Bar committee has raised a reasonable concern about the use of inconsistent language. The committee will bring this inconsistency to the attention of the Appellate Rules Project Task Force, which will be reviewing and recommending revisions to these rules in the near future.

Implementation Requirements and Costs

Implementing this rule change should reduce court costs associated with reviewing supporting documents attached to habeas corpus petitions filed by attorneys. This proposal may increase costs for attorneys who were not previously paginating such supporting documents.

Attachments

Rules 56(i) and 56.5 of the California Rules of Court are amended effective January 1, 2004, to read:

Rule 56. Original proceedings

(a)–(h) * * *

(i) [Proceedings not covered by this rule] The provisions of this rule shall not apply to applications for a writ of habeas corpus, except as provided in rule 56.5, or to petitions for review pursuant to rules 57, 58, and 59.

(j)–(k) * * *

Rule 56.5. Original proceedings seeking release or modification of custody

(a) [Use of Judicial Council form required] A petition to a reviewing court for a writ of habeas corpus, or for any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this State in a State or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form adopted by the Judicial Council. Any such petition is exempt from the provisions of rule 56 relating to form and content of a petition and requiring a petition to be accompanied by points and authorities.

(b) [Exception for good cause] For good cause the court may permit the filing of a petition that does not comply with the provisions of subdivision (a) of this rule.

(c) [Petitions filed by attorneys] If the petition is filed by an attorney:

- (1) The petition need not be on the form specified in (a) but must contain the pertinent information specified in that form and must comply with the requirements of rule 14(a) and (b);
- (2) If the petition is accompanied by a memorandum of points and authorities, the memorandum must comply with the requirements of rule 14(a) and (b); ~~and~~
- (3) The petition must be accompanied by a lodged copy of any related petition (excluding exhibits) previously filed in any lower state court, or in any federal court, pertaining to the same judgment and petitioner. If such documents have previously been lodged with the Supreme Court, the petition need only so state; and

1 (4) Any supporting documents accompanying the petition must comply with
2 the requirements of rule 56(d).
3
4 **(d)** * * *

SPR03-04

Appellate Procedure—Consecutive Pagination of Supporting Documents to Capital Habeas Corpus Petitions Filed by Attorneys
(amend Cal. Rules of Court, rules 56(i) and 56.5)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Gloria Barnes Legal Process Clerk Superior Court of Santa Cruz County	A	N	No comment.	No response required.

SPR03-04

Appellate Procedure—Consecutive Pagination of Supporting Documents to Capital Habeas Corpus Petitions Filed by Attorneys
(amend Cal. Rules of Court, rules 56(i) and 56.5)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
2.	Mr. Saul Bercovitch State Bar of California Appellate Court Committee	AM	Y	<p>The Committee has no opposition to this proposal, which would amend rule 56.5(c) to provide that, when a habeas corpus petition is filed by an attorney, any memorandum of points and authorities must comply with the requirements of rule 14(b), and any supporting documents must comply with the requirements of rule 56(d). The Committee is concerned, however, about the potential impact on the petitioner of non-compliance with the requirements that would be imposed under rule 56.5(c).</p> <p>In conjunction with its review of the added requirements that would be imposed under rule 56.5(c), the Committee reviewed the existing rules governing non-conforming petitions. Rule 56(d) is the general rule governing documents submitted in support of a petition, and the requirements of that rule would be incorporated, under this proposal, by rule 56.5(c)(4). Rule 56(d) provides in part as follows: “The clerk shall accept for filing petitions and supporting documents not in compliance with this subdivision; but the court may give the petitioner notice requiring that the petition and documents be brought into compliance within a state reasonable time, or the petition may be stricken or denied summarily.” Rule 56.5(d), the specific rule that applies to habeas corpus petitions, provides as follows: “A petition that is not in technical compliance with © but that is otherwise in compliance with applicable court rules must be accepted and filed. It may be stricken, however, if the noncompliance is not cured promptly on the request of the clerk.” The Committee discussed the work “technical”-which appears in rule 56.5(d), but not in rule 56(d)-and was uncertain about the precise meaning of that term in the context of these</p>	<p>The committee is not recommending deleting the word “technical” from rule 56.5 as suggested by the State Bar committee. Rules 56 and 56.5 relate to somewhat different types of noncompliance: rule 56(d) relates only to noncompliance with format requirements for supporting documents while rule 56.5 relates to “technical” noncompliance with requirements in 56.5(c) concerning both the form and content of the petition. Simply removing the word “technical” from this provision might create the implication that the court is required to accept for filing documents that do not meet the basic content requirements for habeas corpus petitions. The committee believes, however, that the State Bar committee has raised a reasonable concern about the use of inconsistent language. The Committee will bring this inconsistency to the attention of Appellate Rules Project Task Force, which will be reviewing and recommending revisions to these rules in the near future.</p>

Catalog1
agree.

Positions: A = Agree; AM = Agree only if modified; N = Do not

SPR03-04

Appellate Procedure—Consecutive Pagination of Supporting Documents to Capital Habeas Corpus Petitions Filed by Attorneys
(amend Cal. Rules of Court, rules 56(i) and 56.5)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
3.	Mr. Robert Gerard President Orange County Bar Association	A	Y	No comment.	No response required.
4.	Ms. Patti Morua-Widdows Court Program Manager Superior Court of California, County of Ventura	A	N	No comment.	No response required.